

CITY OF EL PASO, TEXAS
AGENDA ITEM DEPARTMENT HEAD'S SUMMARY FORM

DEPARTMENT: POLICE

AGENDA DATE: 11/30/04

CONTACT PERSON/PHONE:

ASSISTANT CHIEF PAUL CROSS / 564-7310

COMMANDER ROBERT WILES / 564-7101

DISTRICT(S) AFFECTED: 3

SUBJECT:

APPROVE a resolution / ordinance / lease to do what? **OR AUTHORIZE** the City Manager to do what? Be descriptive of what we want Council to approve. Include \$ amount if applicable.

Approve a month-to-month commercial lease agreement by and between Avis Rent A Car Systems, Inc. and the City of El Paso for lease of approximately 5, 010 square feet of property more particularly described therein. The lease would commence on the 1st of November for a maximum term of six months. The monthly cost of this lease is \$5,635.41.

BACKGROUND / DISCUSSION:

Discussion of the what, why, where, when, and how to enable Council to have reasonably complete description of the contemplated action. This should include attachment of bid tabulation, or ordinance or resolution if appropriate. What are the benefits to the City of this action? What are the citizen concerns?

These same premises have been leased by the City of El Paso since November 1, 1998. The City of El Paso is currently in negotiations for a new long term lease with Avis Rent A Car Systems, Inc. This month-to-month lease will allow time to negotiate and seek approval of a new multi-year lease with Avis Rent A Car Systems, Inc. which should include additional office space and property improvements.

PRIOR COUNCIL ACTION:

Has the Council previously considered this item or a closely related one?

As noted above, these same premises have been leased by the City of El Paso since November 1, 1998.

AMOUNT AND SOURCE OF FUNDING:

How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?

This item has been budgeted and monies are available in account 21150040-05363-G210425 (sub-object 502400). The balance in this FY04 Grant account is \$22,548.22. Avis Rent A Car Systems, Inc. has already been paid for the month of November 2004 from this account. Should this lease run the full term of six months, the required funding would be \$28,177.05. Additional funding will be available in a FY05 grant. No account number for FY05 is available as the monies have not been accepted by the City of El Paso and the accounts have therefore not been setup.

BOARD / COMMISSION ACTION:

Enter appropriate comments or N/A

____ N/A _____

*****REQUIRED AUTHORIZATION*****

LEGAL: (if required)

Greg E. Jaramila

FINANCE: (if required)

DEPARTMENT HEAD:

Robert Wiles

(Example: if RCA is initiated by Purchasing, client department should sign also)
Information copy to appropriate Deputy City Manager

APPROVED FOR AGENDA:

CITY MANAGER: _____

DATE: _____

That the Mayor be authorized to sign a month-to-month Lease Agreement, dated November 30, 2004, between **AVIS RENT A CAR SYSTEMS** and the **CITY OF EL PASO**. The term of the lease is from November 1, 2004 through April 30, 2005. The Lease Agreement provides for the lease of approximately 5,010 square feet of property more particularly described therein.

[Police Department, Assistant Chief Paul Cross, (915) 564-7310]

Back up memo:

November 22, 2004

To: City Clerk

From: Assistant Chief Paul Cross

Subject: Consent City Council Agenda – November 30, 2004

The following is an explanation for the item on the City Council Agenda regarding the Police Department:

This resolution is for a lease agreement with Avis Rent A Car Systems that will provide approximately 5,010 square feet of office space.

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the Mayor be authorized to sign a month-to-month Lease Agreement, dated November 30, 2004, between **AVIS RENT A CAR SYSTEMS** and the **CITY OF EL PASO**. The term of the lease is from November 1, 2004 through April 30, 2005. The Lease Agreement provides for the lease of approximately 5,010 square feet of property more particularly described therein.

Dated this 30th day of November, 2004.

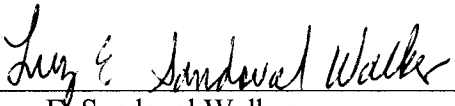
CITY OF EL PASO

Joe Wardy
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:


Luz E. Sandoval Walker
Assistant City Attorney

LEASE AGREEMENT

This lease agreement is made and entered into by and between Avis Rent A Car Systems, Inc. (Sublessor) and City of El Paso – #2 Civic Center Plaza (Sublessee) Sublessor hereby leases to Sublessee and Sublessee hereby leases from Sublessor that certain property with the improvements thereon, containing approximately 5,010 square feet, hereinafter called the “leased premises”, City of El Paso, El Paso County, Texas.

The primary term of this lease shall be month-to-month commencing on the 1st day of November, 2004, not to exceed a total of six (6) months (April 30, 2005), upon the following terms, conditions, and covenants:

1. **TAXES.** Sublessor shall pay real estate taxes assessed against the leased premises during this month-to-month tenure.
2. **UTILITIES.** Sublessee shall pay all charges for utility services to the leased premises except for all utilities (included in lease rate), which shall be paid by the Landlord.
3. **HOLDING OVER.** Failure of Sublessee to surrender the leased premises at the expiration of the lease constitutes a holding over which shall be construed as a tenancy from month to month at a rental of \$5,635.41 per month.
4. **RENT.** Sublessee agrees to and shall pay Sublessor at Avis Rent A Car Systems, Inc. 6 Sylvan Way, Parsippany, NJ 07054, or at such other place Sublessor shall designate from time to time in writing, as rent for the leased premises, the monthly sum of \$5,635.41, payable without demand advance on or before the 10th day of each month, commencing on November 1, 2004, and continuing thereafter for the term of this letting. Rent received after the first day of the month shall be deemed delinquent. If rent is not received by Sublessor by the 15th of each month, Sublessee shall pay a late charge of \$100.00 plus a penalty of \$50.00 per day until rent is received in full. Sublessee shall pay \$10.00 for each returned check.
5. **USE.** Sublessee shall use the leased premises for the following purpose and no other: Office space for El Paso Police Department Administration. Office hours will be from 8:00 a.m. until 8:00 p.m.
6. **SECURITY DEPOSIT.** Sublessee shall pay to Sublessor a security deposit in the sum of \$ n/a payable on or before the commencement of this lease for Sublessee's faithful performance hereunder. Refund thereof shall be made upon performance of this lease agreement by Sublessee, minus any assessments or damages unless Sublessor and Sublessee provide otherwise in Special Provisions.
7. **INSURANCE.** Avis Rent A Car Systems, Inc. shall pay for fire and extended coverage insurance on the buildings and other improvements on the leased premises in an amount not less than \$500,000.00, which amount shall be increased yearly in proportion to the increase in market value of the premises. If Sublessor provides any insurance herein,

Sublessee shall pay to Sublessor, during the term hereof, the amount of any increase in premiums for the insurance required over and above such premiums paid during the first year of this lease. Sublessee shall provide public liability and property damage insurance for its business operations on the leased premises in the amount of \$ n/a which policy shall cover the Sublessor as well as the Sublessee. Said insurance policies required to be provided by Sublessee herein shall name Sublessor as an insured and shall be issued by an insurance company approved by Sublessor. Sublessee shall provide Sublessor with certificates of insurance evidencing the coverage required herein. Sublessee shall be solely responsible for fire and casualty insurance on Sublessee's property on or about the leased premises. If Sublessee does not maintain such insurance in full force and effect, Sublessor may notify Sublessee of such failure and if Sublessee does not deliver to Sublessor within n/a days after such notice certification showing all such insurance to be in full force and effect, Sublessor may at his option, take out necessary insurance to comply with the provision hereof and pay the premiums on the items specified in such notice, and Sublessee covenants thereupon on demand to reimburse and pay Sublessor any amount so paid or expended in the payment of the insurance premiums required hereby and specified in the notice with interest thereon at the rate of n/a percent per annum from the date of such payment by Sublessor until repaid by Sublessee. Sublessee shall have the right to self-insure. Sublessee shall provide evidence of self-insurance prior to occupancy.

8. **CONDITION OF PREMISES.** Sublessee has examined and accepts the leased premises in its present as is condition as suitable for the purposes for which the same are leased, and does hereby accept the leased premises regardless of reasonable deterioration between the date of this lease and the date Sublessee begins occupying the leased premises unless Sublessor and Sublessee agree to repairs or refurbishment.
9. **MAINTENANCE AND REPAIRS.** Sublessor shall keep the foundation, the exterior walls (except glass; windows; doors; door closure devices; window and door frames, molding, locks and hardware; and interior painting or other treatment of exterior walls), and the roof of the leased premises in good repair except that Sublessor shall not be required to make any repairs occasioned by the act or negligence of Sublessee, its employees, subtenants, licensees and concessionaires. Sublessor is responsible for maintenance of the common area and common area equipment. If Sublessor is responsible for any such repair and maintenance, Sublessee agrees to give Sublessor written notice of needed repairs. Sublessor shall make such repairs within a reasonable time. Sublessee shall notify Sublessor immediately of any emergency repairs. Sublessee shall keep the leased premises in good, clean condition and shall at its sole cost and expense, make all needed repairs and replacements, including replacement of cracked or broken glass, except for repairs and replacement required to be made by Sublessor under this section. If any repairs required to be made by Sublessee hereunder are not made within ten (10) days after written notice delivered to Sublessee by Sublessor, Sublessor may at its option make such repairs without liability to Sublessee for any loss or damage which may result by reason of such repairs, and Sublessee shall pay to Sublessor upon demand as additional rent hereunder the cost of such repairs plus interest. At the termination of this lease, Sublessee shall deliver the leased premises in good order and

condition, normal wear and tear excepted. Normal wear and tear means deterioration which occurs without negligence, carelessness, accident or abuse.

10. ALTERATIONS. All alterations, additions and improvements, except trade fixtures, installed at expense of Sublessee, shall become the property of Sublessor and shall remain upon and be surrendered with the leased premises as a part thereof on the termination of this lease. Such alterations, additions, and improvements may only be made with the prior written consent of Sublessor, which consent shall not be unreasonably withheld. If consent is granted for the making of improvements or alterations to the leased premises, such improvements and alterations shall not commence until Sublessee has furnished to Sublessor a certificate of insurance showing coverage in an amount satisfactory to Sublessor protecting Sublessor from liability for injury to any person and damage to any personal property, on or off the leased premises, in connection with the making of such improvements or alterations. No cooling tower, equipment, or structure of any kind shall be placed on the roof or elsewhere on the leased premises by Sublessee without prior written permission of Sublessor. If such permission is granted, such work or installation shall be done at Sublessee's expense and in such manner that the roof shall not be damaged thereby. If it becomes necessary to remove such cooling tower, equipment or structure temporarily so that repairs to the roof can be made, Sublessee shall promptly remove and reinstall the cooling tower equipment or structure at Sublessee's expense and repair at Sublessee's expense any damage resulting from such removal or reinstallation. Upon termination of this lease, Sublessee shall remove or cause to be removed from the roof any such cooling tower, equipment or structure if directed to do so by Sublessor. Sublessee shall promptly repair at its expense any damages resulting from such removal. At the termination of the lease, Sublessee shall deliver the leased premises in good order and condition, natural deterioration only excepted. Any damage caused by the installation or removal of trade fixtures shall be repaired at Sublessee's expense prior to the expiration of the lease term. All alterations, improvements, additions, and repairs made by Sublessee shall be made in good and workmanlike manner.

11. COMPLIANCE WITH LAWS AND REGULATIONS. Sublessee shall, at its own expense, comply with all laws, orders, and requirements of all governmental entities with reference to the use and occupancy of the leased premises. Sublessee and Sublessee's agents, employees and invitees shall fully comply with any rules and regulations governing the use of the buildings or other improvements to the leased premises as required by Sublessor. Sublessor may make reasonable changes in such rules and regulation from time to time as deemed advisable for the safety, care and cleanliness of the leased premises, provided same are in writing and are not in conflict with this lease.

12. ASSIGNMENT AND SUBLETTING. Sublessee shall not assign this lease or sublet the leased premises or any interest therein without first obtaining the written consent of the Sublessor. An assignment or subletting without the written consent of Sublessor shall be void and shall, at the option of Sublessor, terminate this lease.

13. DESTRUCTION. In event the leased premises is partially damaged or destroyed or rendered partially unfit for occupancy by fire or other casualty, Sublessee shall give immediate notice to Sublessor. Sublessor may repair the damage and restore the leased premises to substantially the same condition as immediately prior to the occurrence of the casualty. Such repairs shall be made at Sublessor's expense unless due to Sublessee's negligence. Sublessor shall allow Sublessee a fair reduction of rent during the time the leased premises are partially unfit for occupancy. If the leased premises are totally destroyed or deemed by the Sublessor to be rendered unfit for occupancy by fire or other casualty, or if Sublessor shall decide not to repair or rebuild, this lease shall terminate and the rent shall be paid to the time of such casualty.

14. SUBLESSEE DEFAULT AND REMOVAL OF ABANDONED PROPERTY. If Sublessee abandons the premises or otherwise defaults in the performance of any obligations or covenants herein, Sublessor may enforce the performance of this lease in any manner provided by law. This lease may be terminated at Sublessor's discretion if such abandonment or default continues for a period of ten days after Sublessor notifies Sublessee of such abandonment or default and of Sublessor's intention to declare this lease terminated. Such notice shall be sent by Sublessor to Sublessee at Sublessee's last known address by certified mail. If Sublessee has not completely removed or cured default within the 10-day period, this lease shall terminate. Thereafter, Sublessor or its agents shall have the right, without further notice or demand, to enter the leased premises and remove all property without being deemed guilty of trespass and without waiving any other remedies for arrears of rent or breach of covenant. Upon abandonment or default by the Sublessee, the remaining unpaid portion of the rental from paragraph 4 herein, shall become due and payable. For purpose of this section, Sublessee is presumed to have abandoned the premises if goods, equipment, or other property, in an amount substantial enough to indicate a probable intent to abandon the premises, is being or has been removed from the premises and the removal is not within the normal course of Sublessee's business. Sublessor shall have the right to store any property of Sublessee that remains on premises that are abandoned; and, in addition to the Sublessor's other rights, Sublessor may dispose of the stored property if Sublessee does not claim the property within 60 days after the date the property is stored, provided Sublessor delivers by certified mail to Sublessee at Sublessee's last known address a notice stating that Sublessor may dispose of Sublessee's property if Sublessee does not claim the property within 60 days after the date the property is stored. Notwithstanding anything contained in the Lease to the contrary, under no circumstances may Sublessor enter the lease premises unless it receives Sublessee's prior approval and the representative of the Sublessor is accompanied by a representative of the Sublessee.

15. INTERRUPTION OF UTILITIES. Sublessor or Sublessor's agent may not interrupt or cause the interruption of utility service paid directly to the utility company by Sublessee unless interruption results from bona fide repairs, construction, or an emergency. If any utility services furnished by Sublessor is interrupted and continue to be interrupted despite the good faith efforts of Sublessor to remedy same, Sublessor shall not be liable in any respect for damages to the person or property of Sublessee or Sublessee's employees, agents, or guests, and same shall not be construed as grounds for constructive

eviction or abatement of rent. Sublessor shall use reasonable diligence to repair and remedy such interruption promptly.

- 16. EXCLUSION OF SUBLESSEE** Sublessor may not intentionally prevent Sublessee from entering the leased premises except by judicial process unless the exclusion results from; (a) bona fide repairs, construction, or an emergency; (b) removing the contents of premises abandoned by Sublessee
- 17. LIEN.** Sublessor is granted an express contractual lien, in addition to any lien provided by law, and a security interest in all property of Sublessee found on the leased premises to secure the compliance by Sublessee with all terms of this lease.
- 18. SUBORDINATION.** Sublessor is hereby irrevocably vested with full power and authority to subordinate this lease to any mortgage, deed of trust, or other lien hereafter placed on the demised premises and Sublessee agrees on demand to execute such further instruments subordinating this lease as Sublessor may request, provided such subordination shall be on the express condition that this lease shall be recognized by the mortgagee, and the rights of Sublessee shall remain in full force and effect during the term of this lease so long as Sublessee shall continue to perform all of the covenants and conditions of this lease.
- 19. SIGNS.** Sublessee shall not post or paint any signs at, on, or about the leased premises or paint the exterior walls of the building except with the prior written consent of the Sublessor. Sublessor shall have the right to remove any sign or signs in order to maintain the leased premises or to make any repairs or alterations thereto.
- 20. TENANT BANKRUPTCY.** If Sublessee becomes bankrupt or makes voluntary assignment for the benefit of creditors or if a receiver is appointed for Sublessee, Sublessor may terminate this lease by giving five (5) days written notice to Sublessee of Sublessor's intention to do so.
- 21. CONDEMNATION.** If the whole or any substantial part of the leased premises is taken for any public or quasi-public use under any governmental law, ordinance or regulation or by right of eminent domain or should the leased premises be sold to a condemning authority under threat of condemnation, this lease shall terminate and the rent shall be abated during the unexpired portion of this lease effective from the date of the physical taking of the leased premises.
- 22. HAZARDOUS MATERIALS.** Sublessor warrants and represents that the Property does not contain "Hazardous Materials", as that phrase is defined herein. For purposes of this provision, the phrase "Hazardous Materials" shall mean and include any toxic contaminated or other hazardous materials including, without limitation, asbestos, PCB, transformers, underground storage containers, materials containing any radioactive substances, petroleum base products, paints, solvents, lead, cyanide, DDT, acids, pesticides, ammonium compounds, and any other substance forming a component part of the improvements which has heretofore or may in the future be determined to contain

toxic wastes, hazardous materials, or undesirable substances injurious to the health of occupants living or working in or around the subject Property, Sublessor acknowledges that current and future federal, state, and local laws and regulations may require the clean up of any such Hazardous Materials at the expense of those persons who in the past, present, or future may have had or continue to have any interest in the Property including, but not limited to, current, past, and future owners and users, including tenants, of the Property. The cost and expense of such clean up may be substantial. Sublessor acknowledges and agrees that Sublessor shall look solely to experts and professionals selected by Sublessor to advise Sublessor with respect to the condition of the Property.

23. BROKER FEE. The parties hereto assert that neither has engaged a broker in this transaction. If a broker claims against this lease the defending party shall bear the total cost of the defense.

24. NOTICES. Notices to Sublessee shall be by certified mail or other delivery to the leased premises or to Sublessee's last known address. Notices to Sublessor shall be certified mail or expedited delivery (UPS, FedEx or other similar service) to the place where rent is payable.

25. DEFAULT BY SUBLESSOR. In the event of breach by sublessor of any covenant, warranty, term or obligation of this lease, then Sublessor's failure to cure same or commence a good faith effort to cure same within 10 days after written notice thereof by Sublessee shall be considered a default and shall entitle Sublessee either to terminate this lease or cure the default and make the necessary repairs and any expense incurred by Sublessee shall be reimbursed by the Sublessor after reasonable notice of the repairs and expenses incurred.

26. SIGNS. During the last _____ days of this lease, a "For Sale" sign and/or a "For Lease" sign may be displayed on the leased premises and the leased premises may be shown at reasonable times to prospective purchasers or tenants. Sublessor may not show the leased premises to any person except with Sublessee's prior approval and by having the person accompanied by a representative of Sublessee.

27. RIGHT OF ENTRY. Sublessor shall have the right during normal business hours to enter the demised premises; (a) to inspect the general condition and state of repair thereof, (b) to make repairs required or permitted under this lease, or (c) for any other reasonable purpose.

28. WAIVER OF BREACH. The waiver by sublessor of any breach of any provision of this lease shall not constitute a continuing waiver or a waiver of any subsequent breach of the same or a different provision of this lease.

29. TIME OF ESSENCE. Time is expressly declared to be of the essence in this lease.

30. BINDING OF HEIRS AND ASSIGNS. Subject to the provisions of this lease pertaining to assignment of the Sublessee's interest, all provisions of this lease shall

extend to and bind, or inure to the benefit not only of the parties to this lease but to each and every one of the heirs, executors, representatives, successors, and assigns of Sublessor or Sublessee.

31. RIGHTS AND REMEDIES CUMULATIVE. The rights and remedies by this lease agreement are cumulative and the use of any one right or remedy by either party shall not preclude or waive its right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance, or otherwise.

32. TEXAS LAW TO APPLY. This agreement shall be construed under and in accordance with the laws of the State of Texas.

33. LEGAL CONSTRUCTION. In case any one or more of the provisions contained in this agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof and this agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

34. PRIOR AGREEMENTS SUPERSEDED. This agreement constitutes the sole and only agreement of the parties to this lease and supersedes any prior understandings or written or oral agreements between the parties respecting the subject matter of this lease.

35. AMENDMENT. No amendment, modification, or alteration of the terms hereof shall be binding unless it is in writing, dated subsequent to the date hereof, and duly executed by the parties.

36. ATTORNEYS' FEES. Any signatory to this lease agreement who is the prevailing party in any legal proceeding against any other signatory brought under or with relation to this lease agreement or this transaction shall be additionally entitled to recover court costs, reasonable attorney fees, and all other out-of-pocket costs of litigation including deposition, travel and witness costs, from the non-prevailing party.

37. SPECIAL PROVISIONS. (This section to include additional factual data not included above.)

NON-DISCLOSURE OF THE USE OF PREMISES. Sublessor, its officers, directors, agents, servants, employees and legal representatives shall not discuss or give any information about the nature of the office use of the premises by Sublessee unless such discussion or giving of information is required by law, is necessary for Sublessor to enforce the terms of this Lease or permission to do so has been granted by Sublessee or its authorized employees. The failure of Sublessor to comply with this requirement shall be a material breach of this Lease and Sublessee may terminate this Lease upon giving written notice without suffering any penalties or default under this Lease.

NO EFFECT ON UNDERLYING GROUND LEASE. It is understood that the Sublessee under this Lease, the City of El Paso, Police Department, is a completely different department of the City of El Paso than the Lessor under the Ground Lease under which Sublessor possesses the Leased premises, and that the two departments do not coordinate their duties, responsibilities, budgets or activities; and that Sublessor is dealing with each department separately, as if each were a separate entity. Accordingly, it is specifically agreed that no provision of this Lease shall modify the rights, duties, obligations, liabilities and remedies of the parties under the Ground Lease. In the event of conflict, the terms and provisions of the Ground Lease shall control.

In the event of a default by Sublessee under this Lease, Sublessor shall have no right of offset nor other right or remedy under the Ground Lease and all duties, obligations, liabilities, covenants and responsibilities of Sublessor under the Ground Lease shall continue unaffected. By way of example and not in limitation of the foregoing, in the event that Sublessee (City of El Paso Police Department) may default under this Lease, the sole remedy of Sublessor shall be a lawsuit for money damages in a court of competent jurisdiction and Sublessor shall have no right to, and shall not, withhold or offset any sums due to or do to come due to the Lessor under the Ground Lease.

EXECUTED this 30th day of November, 2004

CITY OF EL PASO

SUBLESSEE' S SIGNATURE

Joe Wardy

Mayor

#2 Civic Center Plaza

El Paso, Texas 79901-1196

ATTEST:

Richarda Duffy Momsen
City Clerk

SUBLESSOR'S SIGNATURE

Avis Rent A Car System, Inc.
6 Sylvan Way
Parsippany, NJ 07054

Approved As To Form:

Approved As To Content:

Luz E. Sandoval Walker
Assistant City Attorney

Richard D. Wiles
Police Chief